

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

No. 7:97-CR-98-01-F

UNITED STATES OF AMERICA	)	
	)	
v.	)	<u>ORDER</u>
	)	
EMMETT MADISON GRAHAM, JR.,	)	
Defendant.	)	

Emmett Graham's most recent motion is captioned, "Emmett Madison Graham, Jr. v. Social Security Administration," and entitled, "Emergency Writ of Mandamus Reinstatement of all Benefits." *See* [DE-265]. He filed this motion in his criminal case.

Graham's first § 2255 motion (of many) [DE-164] was allowed in part by order of May 11, 2001 [DE-180]. Specifically, the court allowed Graham's motion to be re-sentenced in light of the subsequent dismissal of three state court convictions that had been used to calculate his Guideline range. Graham was re-sentenced on August 7, 2001, and the Amended Judgment [DE-195] ordered, in pertinent part, that he be "ineligible for all federal benefits for a period of 5 years." The Judgment specifically provides, however, that

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility.

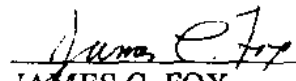
Graham's original Judgment [DE-106], entered September 14, 1998, contained the same language.

Although it is not the model of clarity, Graham's present motion appears to allege that he is not receiving the disability benefits to which he is entitled by virtue of his 100% disability. He seeks from this court an order directing the Secretary of Social Security Administration, Michael Asture, to reinstate "ALL" all his "programs" and federal benefits with back pay.

Graham has not followed the mandatory procedure for challenging the Government's alleged wrongful withholding of federal benefits. Graham may not pursue this relief by filing a motion in his criminal case. Graham should seek assistance from the Social Security Administration to obtain instructions on how to pursue the benefits to which he claims he is entitled. His Emergency Writ of Mandamus for Reinstatement of All Benefits [DE-265] is DENIED.

SO ORDERED.

This, the 25<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
JAMES C. FOX  
Senior United States District Judge